BASIN ELECTRIC POWER COOPERATIVE

IBLA 79-472 Decided September 30, 1980

Appeal from decision of the Wyoming State Office, Bureau of Land Management, rejecting application for conveyance of mineral interests. W-67637.

Affirmed in part and set aside and remanded in part.

1. Federal Land Policy and Management Act of 1976: Reservation and Conveyance of Mineral Interests

   Bureau of Land Management may reject an application for conveyance of mineral interests pursuant to sec. 209(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1719(b) (1976), upon a determination that the application is fatally defective under 43 CFR 2720 or that conveyance would not be in the public interest, but where the record as to a rejection is not complete the decision may be set aside and the case remanded.

APPEARANCES: Claire M. Olson, Esq., and D. N. Sherard, Esq., for appellant.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Basin Electric Power Cooperative has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated May 16, 1979, rejecting appellant's application, W-67637, pursuant to section 209(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1719(b) (1976), for conveyance of mineral interests owned by the United States because the subject land was either encumbered by or contiguous with oil and gas leases and because a

portion of the land is not subject to application. 1/ Appellant does not appeal the decision as to the latter.

Appellant is the record owner of the surface of the subject land and the Grayrocks Dam, situated on the Laramie River downstream from the land. The Grayrocks Reservoir will border or encroach upon this land. Appellant is also a participant in the Missouri Basin Power Project, a regional joint energy program, which is constructing the Laramie River Electrical Generating Station 10 miles upstream from the Grayrocks Dam. The reservoir is intended principally to provide cooling water for the generating station and also to provide an area for recreation and water for irrigation.

[1] Section 209(b) of FLPMA provides in part that

> [t]he Secretary, after consultation with the appropriate department or agency head, may convey mineral interests owned by the United States where the surface is or will be in non-Federal ownership, regardless of which Federal entity may have administered the surface, if he finds

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1/ The subject land is described as:

T. 25 N., R. 65 W., sixth principal meridian, Platte County, Wyoming
Secs. 5: SW 1/4 SW 1/4
6: Lot 5
7: E 1/2 NE 1/4, NW 1/4 NE 1/4, SE 1/4 SW 1/4, Lot 4
T. 25 N., R. 66 W., sixth principal meridian, Platte County, Wyoming
Secs. 1: S 1/2 NE 1/4, NW 1/4 SE 1/4
9: SE 1/4 SE 1/4
10: E 1/2, S 1/2 SW 1/4
11: W 1/2
12: NW 1/4 NW 1/4
13: S 1/2 NE 1/4, SE 1/4 SW 1/4, E 1/2 SW 1/4, SW 1/4 SW 1/4
14: S 1/2 SE 1/4
15: S 1/2 SW 1/4, SW 1/4 SE 1/4
23: NE 1/4 NE 1/4
24: NW 1/4
25: NW 1/4 SW 1/4
T. 25 N., R. 67 W., sixth principal meridian, Platte County, Wyoming
Sec. 27: E 1/2 SE 1/4

Oil and gas leases are contiguous with the SW 1/4 SW 1/4 sec. 10 and the NW 1/4 sec. 24, T. 25 N., R. 66 W., sixth principal meridian, Platte County, Wyoming.

The United States did not reserve the minerals with respect to the NW 1/4 SW 1/4 sec. 25, T. 25 N., R. 66 W., sixth principal meridian, Platte County, Wyoming.

> (1) that there are no known mineral values in the land, or (2) that the reservation of the mineral rights in the United States is interfering with or precluding appropriate non-mineral development of the land and that such development is a more beneficial use of the land than mineral development.

43 U.S.C. § 1719(b)(1) (1976).

In its statement of reasons for appeal, appellant contends that it is entitled to conveyance of the mineral interests because both tests in the statute are satisfied. First, appellant argues, there are no known mineral values in the land. As for the oil and gas leases on or adjacent to the land, it argues they are "speculative" and not "producing." "An oil and gas lease does not by itself impute a mineral value to the land." Second, appellant argues that reservation of the mineral rights is interfering with or precluding appropriate non-mineral development of the land and such development is more beneficial than mineral development. Appellant maintains that "there is the possibility that some party may attempt to explore for some mineral and establish some claim to the mineral estate that would interfere with the filling and operation of the reservoir."

Appellant is mistaken in its apparent assumption that an applicant for conveyance of a mineral interest is entitled to conveyance when either or both of the conditions in section 209(b)(1) of FLPMA, supra, are satisfied. The language of this portion of the statute is discretionary and entitles the Secretary or his designated representative to reject an application upon a determination supported by facts of record that conveyance of the mineral interest would not be in the public interest. Cf. R. C. Hoefle, 41 IBLA 174 (1979). The conditions outlined in the statute are preconditions for conveyance, not rejection of the application.

The decision stated that the application did not meet the requirements of 43 CFR 2720.1-1 and 2720.1-2. The first regulation merely provides that an application to purchase may be filed if the applicant

> has reason to believe that there are no known mineral values in the land, or (b) The reservation of ownership of the mineral interests in the United States interferes with or precludes appropriate non-mineral development of the land and such development would be a more beneficial use of the land than its mineral development.

Regulation 43 CFR 2720.1-2 sets forth the requirements for filing an application, including the specific information that must be set forth. Subparagraph (4) provides that there be a statement, as complete as possible concerning:

> (ii) the existing and proposed uses of the land, (iii) why the reservation of the mineral interests in the United States is interfering with or precluding appropriate non-mineral development of the land covered by the application (iv) how and why such development would be a more beneficial use of the land than its mineral development, and (v) a showing that the proposed use complies or will comply with State and local zoning and/or planning requirements.

The decision did not clearly specify how the applicant failed to meet the requirements of these regulations, other than by referring to the facts concerning the existing mineral leases. If BLM believes that the application is not sufficient it should advise the applicant of the particulars thereof or request further information. If rejection is deemed to be in the public interest, BLM should make any original decision thereon and state its reasons as to both criteria listed under 43 U.S.C. § 1719(b)(1) (1976), supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as to the lands not subject to application and set aside and remanded as to the remaining lands.

Joseph W. Goss
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Joan B. Thompson
Administrative Judge